Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
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	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	

REPLY COMMENTS OF THE CITY OF BALTIMORE, MARYLAND

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July 17, 2017

TABLE OF CONTENTS

I. INTRODUCTION

The City of Baltimore, Maryland ("City") submits these consolidated reply comments in response to the *Wireless Notice of Proposed Rulemaking and Notice of Inquiry* ("*Wireless NPRM/NOI*")[1] and the associated *Wireline Notice of Proposed Rulemaking and Notice of Proposed Rulemaking* ("*Wireline NPRM/NOI"*),[2] issued by the Federal Communications Commission ("Commission").

In these reply comments, the City seeks to correct the record with regard to certain submitted comments concerning the City's conduit management practices. The City also desires to share its perspectives as to various matters raised by the Commission and by initial comments in these proceedings.

II. COMMENTS

A. Certain Comments Concerning the City's Conduit Management Practices are Inaccurate and Misleading.

A couple of comments in these proceedings cite the City of Baltimore's policies with regard to the use of City-owned conduit as an example of discriminatory conduct.[3] These claims are misleading, and ignore certain crucial facts.

Baltimore City is one of the few cities in America that owns and maintains its own extensive conduit system as a public service, one available to any entity that that wishes to use it

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1 *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Notice of Proposed Rulemaking *("Wireless NPRM"), and* Notice of Inquiry ("*Wireless NOI*"), WT Docket 17-79, released April 21, 2017.

2 *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Notice of Proposed Rulemaking ("*Wireline NPRM*"), Notice of Inquiry ("*Wireline NOI*") and Request for Comment, WC Docket 17-84, released April 21, 2017.

3 *See* Comments of Conterra Broadband Services, Southern Light, LLC and Uniti Group, WT 17-79, WC 17-84, at 30-32; Comments of R Street Institute, WC 17-84, at 6.

to provide their own private or public service. Users of the City-owned conduit system are treated similarly, whether a conduit user is an educational facility, hospital, bank, or a fiber service provider.

In order to maintain this public system, the City charges a uniform maintenance fee to cover the actual cost of conduit repairs and maintenance. No fees in excess of the City's costs are charged. Assertions that City conduit fees are excessive belies the fact that the City charges only what the system costs the City to maintain. When conduit fees were increased in 2015, the fees were based entirely on provable costs associated with maintaining a seriously deteriorated, century-old system.

It is suggested that Verizon's 130-year old franchise to use the public right of way for its own conduit system intentionally discriminates against fiber service providers who seek to use City-owned conduit.[4] A century before any fiber service provider existed, the City granted a franchise to Verizon's predecessor, C & P Telephone, giving it the right to *construct and maintain its own conduit system* in the public right of way. For the privilege of using City right-of-way in 1889, the City agreed to franchise compensation in the amount of $.07 per linear foot of installed conduit, presumably a reasonable fee in 1889. The City today must honor that ancient agreement, given the City's understanding of the applicable laws.

The core allegation concerning this ancient franchise is that the 1889 franchise fee discriminates against new fiber service providers, because the City "charges them $3.33 per linear foot to lease space in the City's conduit."[5] First, the City charges conduit users a

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4 Comments of Conterra Broadband Service, *et al.,* at 6.

5 *See* Comments of Conterra Broadband Services, *et al.,* WT 17-79, WC 17-84, at 29 (citing *Zayo Group LLC v. Mayor and City of Baltimore et al.,* 2016 WL 3448261 (D. Md. 2016).

maintenance fee of $2.00 per linear foot of occupation, not $3.33. Second, a franchise fee to occupy the right of way for installation of privately owned conduit is wholly different than a maintenance fee associated with the use of City-owned conduit. There is no real basis for comparing one to the other. The commenters' claim of intentional – or even accidental – discrimination is grounded on a comparison of a fixed rate – set in 1889 – to a floating rate charged 130 years later for a wholly different activity.

Also note that, while the City conduit system is geographically extensive, it does not reach every location in the City. In the absence of conduit at a given location, the connection of that location to the rest of the system requires the construction of additional conduit. In these situations, the City reasonably requires those who wish to connect at that location to construct the additional conduit. The cost of construction logically falls on those who seek to connect at that location. The extension thereafter is deeded to the City to become part of the City system, and is thereafter maintained by the City. In this way, the public service aspect of the City conduit system is sustained. Any assertion that the City's conduit policy is framed to discriminate against certain fiber service providers intentionally ignores the practicalities of running a century-old public service infrastructure in a manner that effectively serves the general public, including but not limited to fiber providers.

Finally, the City of Baltimore does not, and has not, prevented any party from using Verizon conduit. Verizon maintains its own conduit at its own expense. Other than the receipt of its franchise fee, the City has no control or interest in Verizon conduit operations. As far as the City is concerned, decisions about Verizon's conduit usage are entirely Verizon's to make.

B. The City Joins Other Commenters Who Question the Premise of These Proceedings.

The City agrees with commenters who are troubled by the tenor of these proceedings, and questions whether the Commission is operating upon an unproven premise.[6] In particular, the Commission in these proceedings appears to have already reached the following conclusions concerning wireless facility deployment: 1) that significant, systemic delay in the deployment of wireless facilities exists; 2) that such delay is a consequence of local and state government delay and obstructionism; 3) that the Commission's current regulations do not provide adequate means to address such supposed delay; and 4) that new regulations are therefore advisable. "[I]t cannot be denied that the NPRM and NOI in this Docket has set a table that is steeply tilted against the legitimate and longstanding principles of local control."[7] The City, like other commenters, is concerned about this approach.[8]

What the submitted comments demonstrate is that there is a relatively small number of instances of delays and problems among the 3,600 local jurisdictions nationwide, and that, but for a few cases, the issues generally stem from the sudden need of local governments to consider and adapt to a wholly new regulatory and ROW management circumstance. The placement of large numbers of wireless facilities within the public right of way is a novel development, with significant and longstanding ramifications.

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6 *See* Comments of Smart Communities Coalition, WT 17-79, at 5; Comments of Comments of Colorado Communications and Utility Alliance, the Ranier Communications Commission, the Cities of Seattle and Tacoma, Washington, King County Washington, the Jersey Access Group and the Colorado Municipal League, WT 17-79 ("Colorado Communications and Utility Alliance, *et al*"), at (ii).

7 Comments of Colorado Communications and Utility Alliance, *et al*., WT 17-79, at (ii)-(iii).

8 Comments of Smart Communities Coalition, WT 17-79, at 5; Comments of Colorado Communications and Utility Alliance, *et al*, WT 17-79, at (ii).

So, we urge the Commission to view the record in light of the fact that we are, in a sense, in the "early adopter" phase of small cell deployment. Many local governments are finding it necessary to undertake significant preliminary planning work so that the anticipated flood of small cell installations can be reasonably accommodated. In some cases, this requires significant changes to existing city ordinances, and perhaps adoption of new ordinances. Local governments may need to prepare new master agreements, develop new permit documents and procedures, and undertake substantial other work involving multiple departments to address what is, for many, a wholly new set of issues. In our experience, at least, this is done with significant consultation with the industry. As the Commission can surely appreciate, this process can take some time to complete, but this "upfront" work "will translate into faster consideration of individual applications over the longer term."[9]

For example, in the City of Baltimore's case, it was necessary to draft and negotiate two substantial and wholly new agreements: a franchise conferring a right to use the City's public right of way (as required under the City Charter), and an attachment agreement addressing the terms under which a provider can receive a permit to attach to City-owned streetlights. Throughout their development, the City sought and obtained input from the industry. While it took some time to prepare the agreements, negotiate them with industry, and process them through City Council adoption, we are pleased that we ultimately reached agreement with several wireless facility providers, and deployment is proceeding apace.

In short, while there is sometimes a need for in-depth and perhaps-contentious upfront work (which may take longer than the industry might prefer), apart from some isolated

[9] Comments of Smart Communities Coalition, WT 17-79, at 15.

instances[10] it appears to us that the system is basically working.

C. The Proliferation of Wireless Facilities Within the Public Right of Way Implicates Core ROW Management Obligations of Local Governments.

Contrary to the remarks of some commenters, small cells – especially in numbers – will have a meaningful and possibly dramatic impact on the public right of way. The prospect of extensive deployment of small cell facilities presents very real and very significant right-of-way management concerns for local governments. These primarily include, but are not limited to, public safety and aesthetic concerns.

AT&T in its comments asserted that "[t]here is no sound reason for any municipality to subject small cell deployments to the same review process that apply to macro cells. Because of their unobtrusive size, small cells simply do not pose similar considerations as to environmental or aesthetic impacts."[11]

In fact, as several commenters noted, "small cells" are not necessarily "small," and are not necessarily "unobtrusive."[12] "Small cell" refers to the size of the RF propagation footprint, not the size of the equipment.[13] As the City of Philadelphia noted:

> "[S]mall cell" typically does not mean facilities weighing a few pounds and a cubic foot or so in size. This technology typically uses pole-mounted antennas of up to three or even six cubic feet in volume with equipment cabinets of 17 cubic feet or more. Equipment cabinets of that volume can measure two feet by two feet by over four feet, and are not "small" – or de minimus in weight – by any accounting, particularly when multiple antennas and cabinets are mounted on a single pole. Some small cell/DAS providers seek to place large numbers of poles with such antennas and cabinets in the public rights of way of congested, densely populated cities like Philadelphia. The safety concerns they present to our citizens are very

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10 It must be noted that wireless facility owners are sometimes the cause of delays as well. *See* Comments of the City of Austin, Texas, WT 17-79, at 4.

11 Comments of AT&T, WT 17-79, at 7.

12 *See* Comments of the American Public Power Association, WT 17-79, at 16; Comments of City of Philadelphia, WT 17-79, at 4.

13 *See* Comments of Smart Communities Coalition, WT 17-79, at 44.

real and can be addressed only by adequate engineering review.[14]

And not only are small cells not necessarily "small," there promise to be large numbers of them, located in the immediate proximity of where people live and work and travel. Unlike macro cell towers, they will not be relegated to an isolated plot of land, but will be largely located within the public right of way, which local governments have the obligation and authority to effectively manage. In some cases, *based on local circumstances*, it may be necessary and appropriate for local governments to make some reasonable, nondiscriminatory and competitively neutral decisions as to where wireless facilities can be located. It is patently unreasonable (and legally questionable) for local governments to be wholly denied this core ROW management right, as AT&T urges,[15] by the Federal Communications Commission.

As such, AT&T's complaint that local governments "arbitrarily limit" and "effectively prohibit" the provision of services when they require some concessions concerning, for example, minimum spacing and mid-block placements, is untenable. The fact that different localities may adopt different standards is not evidence that they are "arbitrary"; rather, it highlights the need for *local* discretion and the important of *local* control – rather than FCC control -- over the public right of way.[16] "[U]nlike the Commission, [local governments] must also consider and

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14 Comments of City of Philadelphia, WT 17-79, at 4.

15 Comments of AT&T, WT 17-79, at 15.

16 There is a significant difference between eliminating local authority so as to allow towers of any height in any part of the rights-of-way, regardless of the impact on property owners and property values, versus exercising local authority to, for example, mandate height limits consistent with local zoning regulations for all structures in the neighborhood, and require placement of vertical structures closer to lot lines where they will not impact sight lines from the front door of one's home. These are inherently local decisions. The NPRM and NOI do not seem to recognize that a wider array of community

balance factors other than the needs of broadband providers."[17]

We also urge the Commission to recognize that currently, when citizens inquire or object or complain about the siting of wireless facilities near them (as they do, on various grounds), they will not, as a general matter, be calling the Commission. They will – and do – call their local government officials, who do their best to address the issue in cooperation with the facility provider. If the Commission proceeds to remove local government authority over wireless facility placement and other right-of-way management issues, the local governments will be largely powerless to respond, other than to refer those complaining citizens to the Commission.

D. A "Deemed Granted" Remedy Would Be Inappropriate, is not Legally Authorized, and Would Be Bad Policy.

1. A "deemed granted" remedy would usurp a core function of local governments.

The Commission proposes to adopt a "deemed granted" remedy for a violation of Section 332(c)(7)(B(ii) in the context of applications outside the scope of the Spectrum Act.[18] The

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> benefits may be lost, should the Commission create preemptory rules to benefit one industry, at the expense of all other community interests.

Comments of Colorado Communications and Utility Alliance, *et al*, WT Docket No. 17-79, at (ii)-(iii).

17 > They must also consider their obligations to promote public safety; to manage right-of-way ("ROW") capacity and congestion; to preserve unique local historic and scenic districts, neighborhoods, parks and viewsheds; and to ensure that taxpayers receive adequate compensation for private profit-making use of the ROW and other public property. . . . No provision of the Communications Act authorizes such heavy-handed FCC intrusion into local affairs.

Comments of the Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville Alabama; and Knoxville, Tennessee ("Cities of San Antonio, *et al."*), WT 17-79, at 2.

18 *Wireless NPRM*, ¶ 8.

Commission looks to the Spectrum Act's "deemed granted" remedy – which concerns applications to *modify* an *existing* facility – and suggests that such a remedy can and should also apply in the case of applications to install wholly new facilities within the public right of way.[19] At the same time, the Commission suggests that it may shorten the existing shot clock for such non-Spectrum Act applications.

The practical effect of a "deemed granted" remedy, together with a shortened shot clock, would be to create a *complete exemption* from all local zoning, land use, and safety regulation, based upon arbitrary and global classification(s) established by a federal agency. The Commission's proposed rule would leave no recourse whatsoever in the case of permit-related issues that may, for whatever reason, take longer than usual to resolve.

The City agrees with comments of the City of Austin, Texas, that "the Commission appears poised to do this without regard to other legitimate public policy goals, local needs and conditions, public safety, and the legitimate interests of other property owners and users of public rights-of-way."[20] As one commenter put it, "[n]o provision of the Communications Act authorizes such heavy-handed FCC intrusion into local affairs."[21]

In addition, "[t]he Commission has no authority to issue local land use permits, safety inspections, or other necessary local approvals. Congress does not have the 'ability to commandeer local regulatory bodies for federal purposes.'"[22]

2. Section 332(c)(7) specifies the remedy for a shot clock violation, and it does not include a "deemed granted" remedy.

Section 332(c)(7) states that a locality must act on each application "within a reasonable

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19 *Wireless NPRM*, ¶¶ 8-9.
20 Comments of the City of Austin, Texas, WT 17-79, at 5.
21 Comments of the Cities of San Antonio, *et al.*, WT 17-79, at 2.
22 Comments of Smart Communities Coalition, WT 17-79, at 29.

time, taking into account the nature and scope of such request."[23] The statutory remedy, if a locality does not "act within a reasonable time," lies in court action, which is to be conducted "on an expedited basis."[24]

The City agrees with other commenters that the Commission does not possess authority under the statute to impose a "deemed granted" remedy for non-Spectrum Act applications.[25] As evidenced by the statutory text, Congress intended that alleged violations of Section 332(c)(7)(B)(ii) must be evaluated on a case-specific basis. The Commission's *2009 Declaratory Ruling* established rules – the shot clocks – interpreting what is *presumptively* meant by the term "reasonable period of time." Right now, the parties still have the recourse of court action, if need be, to determine whether the time taken was reasonable "taking into account the nature and scope of the request."

The Commission's "deemed granted" proposal would render the court remedy meaningless. It would also, despite the Commission's confidence otherwise, fail to "take into account the nature and scope" of the particular circumstances. The Commission appears to suggest that it can promulgate some rough categorizations concerning the type of application, with those classifications serving as the *final* arbiter of the "nature and scope" of the application, and thence what is a "reasonable" timeframe.[26] Given the disparity of local circumstances, and the various conditions that might cause some permits to take longer than others (especially in this "early adopter" phase, as noted previously), it is unrealistic to conclude that the Commission can,

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23 47 U.S.C. § 332(c)(7)(B)(ii).

24 47 U.S.C. §332(c)(7)(B)(v).

25 *See* Comments of Colorado Communications and Utility Alliance, *et al.*, WT 17-79, at 7; Comments of City of Philadelphia, WT 17-79, at 2-3; Comments of the City and County of San Francisco, WT 17-79, at 2.

26 *Wireless NPRM*, ¶ 12 *et seq.*

fairly and reasonably do so. In practice, such a system would be arbitrary.

We acknowledge the point made in the comments of Crown Castle, that the judicial remedy required under Section 332(c)(7)(B(v), despite the statutory "expedited basis" requirement, might be costly, might stretch on for a time, and might in practice give local governments more time to act. If the Commission does decide to substitute its own remedy for that of the plain language of the statute, it might consider exploring whether to adopt a form of administrative appeal before the Commission, with a decision to be entered within a specified period of time. Such an approach would probably be more palatable to local governments than the unmitigated sledgehammer of the Commission's "deemed granted" proposal. Barring that, we believe the proper avenue to address this issue lies with Congress, or with state legislatures (and indeed, that is what is happening in a number of places).

3. A "deemed granted" remedy would be counterproductive.

The Commission's "deemed granted" proposal is a bad idea as a policy matter as well: "With a deemed granted remedy looming, local governments will be encouraged to take an application, where sufficient time is not available to evaluate it, and schedule it for a formal decision of denial, simply to avoid the deemed granted federal remedy. The deemed granted remedy, even if the Commission had the authority to adopt it, would slow deployment, not speed it up."[27]

We also note and agree with Comcast's admonition that the Commission "is likely to be more effective through a constructive relationship with state and local authorities than a confrontational one."[28]

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[27] Comments of Colorado Communications and Utility Alliance, *et al.*, WT 17-79, at 10.

[28] Comments of Comcast Corporation, WC 17-84, WT 17-79, at 3.

E. The Section 332(c)(7) Shot Clocks Should Not be Shortened, Nor Broadened in Scope.

1. There is no demonstrated need to reduce the shot clock for new wireless facility siting applications, and doing so would be counterproductive.

On top of proposing a "deemed granted" remedy, the Commission proposes to shorten the shot clock under Section 332(c)(7).[29] This found predictable support among the industry commenters.

In our view, shortening the shot clock would compound the issue. As noted above, the siting of small cells within the public right of way and their attachment to municipally owned structures presents many novel and complicated issues for local governments generally. Addressing these issues can require substantial "upfront" work. Reducing the shot clock, on top of an absolute "deemed granted" remedy, would render the thoughtful completion of such work (in cooperation with industry) virtually impossible.

The City also disagrees with commenters asserting that any shortened shot clock should apply, without limitation, to "batch" application request.[30] While in some circumstances local governments may be able to meet a shot clock deadline for a truly homogenous, limited-in-number batch request, it is not reasonable to require a local government to evaluate and process dozens (or more) of applications for new sites, all at once, within 90 days. Local governments are not necessarily opposed to processing applications as a batch, but in practice it needs to be done with a realistic understanding of what the local permit office (and any other reviewing agency) can handle. That is a decision best left to local governments, not the Federal Communications Commission.

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29 *Wireless NPRM*, ¶ 17.

30 *See* Comments of Crown Castle International Corp., WT 17-79, at 30.

2. The City supports the Commission's previous determination that attachments to municipally owned poles and streetlights are not subject to regulation under Section 332(c)(7).

CTIA urges the Commission to "clarify" that the shot clocks under Section 332(c)(7) apply to municipally owned poles and other municipal property located within the right of way.[31] The City disagrees. First, as the Commission acknowledged in its *2014 Infrastructure Order*, there is an important legal distinction between (1) managing and granting access to the right of way generally, as in a franchise or right of way occupancy permit, and (2) granting the right to attach equipment to municipally owned facilities – such as a building, water tower, streetlights or utility poles – that are designed for a particular non-regulatory purpose and constructed and operated by the municipality in a non-regulatory capacity.[32]

The second reason is more practical. While state and local laws vary on this point, the attachment of privately owned facilities to municipally owned structures (streetlights, for example), typically requires the parties to execute a lease or license agreement. These agreements are negotiated, and in fact this negotiation provides an opportunity for mutually beneficial public-private partnerships of various sorts. For example, we are just beginning to see the emergence of models concerning "smart city" applications and infrastructure that can leverage this relationship. These arrangements are not subject to any shot clock restriction under Section 332(c)(7), nor should they be, as a policy matter. If the Commission is compelled to determine that such negotiations must be complete and an attachment agreement executed within 90 days, these innovative models will be much less likely to emerge and evolve. In fact, local governments will be less inclined to facilitate such attachments at all.

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31 Comments of CTIA, WT 17-79, WC 17-84, at 13.

32 *See 2014 Infrastructure Order*, ¶¶ 239-40.

F. A "Fair and Reasonable" Fee Under Section 253(c) Need Not be Limited to Cost.

AT&T (and others) call for the Commission to declare, under Section 253(c), that cost-based rates to access the public right of way are "fair and reasonable" and that market-based rates are not.[33] The City believes that rates for access to the public right of way need not be limited to the City's cost to be "fair and reasonable" within the meaning of Section 253(c).

The City does agree that rates to access the right of way by similar entities must be nondiscriminatory. In light of the fact that other similar users of the right of way (including cable and telecommunications service providers) may be assessed a non-cost-based fee, the Commission's creation of a special carve-out for the wireless facility industry would create a policy and legal dilemma for local governments, and for various other service providers.

Some providers complain about what they perceive to be high fees and the "potential for lost investment."[34] It is not clear to the City why local governments should be forced to, in effect, subsidize the deployment of wireless facilities, particularly as compared with other users of the right of way that do pay market-based fees. There is a long history of local governments assessing rent-based compensation upon private entities that install facilities in local rights of way, including by telecommunications and cable providers.[35]

It is also unclear to the City how the Commission might reconcile the notion that a right of way access fee must be cost-based to be "fair and reasonable," with the cable franchising provisions of the federal Cable Act. The Cable Act's franchise fee provisions, under which a

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33 Comments of AT&T, WT 17-79, at 17.
34 Comments of AT&T, WT 17-79, at 19.
35 *See* Cities of San Antonio, *et al.*, WT 17-79, at 2.

local franchising authority may assess a right of way franchise fee in an amount up to 5 percent of the cable operator's gross revenues from the provision of cable service in the franchise area, clearly is not limited to cost.[36] Was Congress not "fair and reasonable" when it adopted that provision?

Even if the Commission opts to limit fees for right of way access under Section 253(c), fees for access to municipally owned structures must not be limited to cost. As noted above, such arrangement are not subject to Section 253 at all, and can certainly be market-based. As the City and County of San Francisco noted:

> A determination here that section 253(c)'s prohibition on unfair and unreasonable fees applies to local governments' license fees for use of their infrastructure would likely violate the U.S. Constitution and require local governments in many states to violate their own state constitutions. The Commission cannot regulate how local governments choose to use their property under the guise of preemption.[37]

Similarly,

> The Commission's authority [regarding fees for siting on publicly owned property] is no different than its authority to direct private property owners to lease their property to wireless facilities owners at Commission-set fees. Such a directive might speed deployment of wireless broadband networks. [But] [t]here is simply no legal authority for the Commission to engage in these practices.[38]

G. Some Commenters Call for an Overly Broad Interpretation of Section 253(a).

AT&T and others encourage the Commission to find that a local or state government has "effectively prohibit[ed]" service in violation of Section 253(a) virtually any time a wireless facility provider is adversely affected by a regulatory decision of such entity.[39] These commenters tend to focus on whether the regulatory decision "materially inhibits or limits…" the

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36 47 U.S.C. § 542(b).

37 Comments of the City and County of San Francisco, WT 17-79, at 29.

38 Comments of Colorado Communications and Utility Alliance, *et al*, WT 17-79, at 20-21.

39 *See* Comments of AT&T, WT 17-79, at 9.

provider in any way, and tend to ignore important context within the remainder of the pertinent test, namely, "… the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."

We urge the Commission to not ignore the rest of the test when evaluating whether a government action amounts to an "effective prohibition" under Section 253(a). It should be evaluated in the larger, "fair competition" sense, not simply whether a burden has been placed on a provider, or a provider finds something to be difficult, or a provider might prefer something to be different, or to have a lower cost of doing business. It is of course understandable that service providers would prefer everything to be as simple, fast, and profitable as possible, but such a broad reading the Section 253(a) "effective prohibition" test must be weighed against local governments' core obligations concerning the health, safety and welfare of their communities.

H. The Commission Should Address Public Concerns About RF Emissions.

The City strongly agrees with comments recommending that the Commission better address public concerns about RF emissions.[40] Among the many citizen concerns that local governments must field and manage with respect to wireless facilities siting, health concerns about RF emissions are often at the forefront. The City understands that local governments do not have authority to make siting decisions based upon RF emission concerns, but that does little to assuage the concerns of our citizens (precisely the opposite, in fact). Unfortunately, the Commission's statements on this issue are dated and incomplete, despite having opened a proceeding several years ago and received nearly a thousand comments on the topic. In short, the Commission should finish its work on the 2013 RF NOI. Failing that, the Commission

[40] Comments of Smart Communities Coalition, WT 17-79, at 29-30.

should prepare materials – suitable for further distribution by local governments to constituents – that can effectively address citizen concerns about RF radiation.

Respectfully Submitted,

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July 17, 2017